No. 97-174

In The

Supreme Court of the United States

October Term, 1997

CASS COUNTY, MINNESOTA; SHARON K. ANDERSON, in her official capacity as Cass County Auditor; MARGE L. DANIELS, in her official capacity as Cass County Treasurer; STEVE KUHA, in his official capacity as Cass County Assessor; JAMES DEMGEN, in his official capacity as Cass County Commissioner; JOHN STRANNE, in his official capacity as Cass County Commissioner; GLEN WITHAM, in his official capacity as Cass County Commissioner; ERWIN OSTLUND, in his official capacity as Cass County Commissioner; VIRGIL FOSTER, in his official capacity as Cass County Commissioner,

Petitioners,

vs.

LEECH LAKE BAND OF CHIPPEWA INDIANS,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF *AMICUS CURIAE* SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN IN SUPPORT OF RESPONDENT LEECH LAKE BAND OF CHIPPEWA INDIANS

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QUESTION PRESENTED

Do §§ 4, 5, and 6 of the Nelson Act contain the requisite unmistakably clear consent of Congress to permit a state to impose a property tax upon reservation land owned in fee by a sovereign tribal government?

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STATEMENT OF INTEREST OF AMICUS SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN

Amicus Saginaw Chippewa Indian Tribe of Michigan[1] is a federally recognized Indian tribe whose reservation is located in central Michigan. The Tribe is the political successor to the Saginaw Chippewa, Swan Creek and Black River Band Indians who, through a series of treaties with the United States, relinquished over 7 million acres of land in the southern peninsula of the present-day state of Michigan. *Saginaw Chippewa Indian Tribe of Michigan v. United States*, 30 Ind. Cl. Comm. 295, 296 (1973). The Tribe's reservation was created by treaties in 1855 and 1864 from lands withdrawn for the Tribe by Executive Order in 1855. Much of the reservation land was allotted according to an allotment plan contained in the 1864 treaty, which predates the General Allotment Act by over twenty years.

Like many federally recognized Indian tribes throughout the United States, the Leech Lake Band of Chippewa Indians and the Saginaw Chippewa Tribe are struggling to reacquire lands within their reservations that were removed from tribal ownership. This case arose from the efforts of Cass County, Minnesota, to ignore the Leech Lake Band's sovereign and governmental status and tax the Band as it would any other individual landowner, thereby frustrating the Band's efforts to rebuild its land base, impinging on the Band's status as an independent sovereign entity, and undermining the Federal Government's history of tribal governmental recognition and protection. *See Leech Lake Band*

1. The parties have consented to the filing of this brief.

No counsel for a party in this case authored this brief, either in whole or in part. No person or entity other than amicus Saginaw Chippewa Indian Tribe of Michigan, its members, or its counsel made a monetary contribution to the preparation and submission of this brief. *See* Supreme Court Rule 37.6.

of Chippewa Indians v. Cass County, 108 F.3d 820 (8th Cir. 1997). The ruling, which is the subject of this petition, concluded that Cass County may not assert taxing authority over the Band and its property absent the clear consent of Congress to do so.

This ruling is consistent with the ruling of the Sixth Circuit Court of Appeals in *United States v. Michigan*, 106 F.3d 130 (6th Cir. 1997), *petition for cert. filed*, 66 U.S.L.W. 3085 (U.S. June 30, 1997) (No. 97-14). The Saginaw Chippewa Tribe is a party to *United States v. Michigan*, and the Court's decision here will directly affect the outcome of *United States v. Michigan* and the interests of the Tribe. For the reasons discussed by respondent Leech Lake Band and amici in support, the Saginaw Chippewa Tribe of Michigan respectfully urges affirmance of *Leech Lake Band of Chippewa Indians v. Cass County*, 108 F.3d 820 (8th Cir. 1997).

SUMMARY OF ARGUMENT

The Eighth Circuit Court of Appeals' application of the well established "unmistakably clear intent" rule is consistent with this Court's jurisprudence concerning the constitutional bars to states' power to tax sovereign tribal governments within their reservations. Because the Constitution gives the Federal Government exclusive authority over Indian affairs, this bar can be overcome only by a clear expression of unmistakable congressional intent to allow a state to exercise such authority. This rule is premised upon essential rules governing federal-state relations and the Federal Government's commitment to protect tribal sovereignty, all of which are implicated when such consent is granted. To find the requisite congressional consent in anything other than a clear expression impairs the ability of sovereign Indian tribes to become self-governing and self-sufficient through reacquisition of lands within their reservations and threatens their ability to retain those lands once reacquired.

ARGUMENT

I. THE "UNMISTAKABLY CLEAR INTENT" RULE DERIVES FROM FUNDAMENTAL PRINCIPLES OF FEDERALISM AND CONGRESS' ACKNOWLEDGEMENT OF TRIBAL SOVEREIGNTY.

Before the coming of the Europeans, Indian tribes were self-governing sovereign political communities. *United States v. Wheeler*, 435 U.S. 313, 322-33 (1978); *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 172 (1973). For over 200 years, the United States in general and Congress in particular have recognized the inherent sovereignty of Indian tribes.

The Indian Commerce Clause, U.S. Const. art. I, § 8, cl. 3, and the power of Congress under the Constitution to conclude treaties with Indian tribes provide Congress with "all that is required" for complete control over Indian affairs. *Worcester v. Georgia*, 31 U.S. 515, 559 (1832). The Supremacy Clause mandates that treaties and federal constitutional authority over Indian affairs shall control over state actions affecting Indian affairs. U.S. Const. art. VI, cl. 2. These provisions both expand federal power and contract state power resulting in a broad grant of authority of the Federal Government over Indian affairs. Congress retains exclusive authority over Indian affairs and jealously guards its authority from intrusion by the states. *See, e.g., Williams v. Lee*, 358 U.S. 217 (1959); *McClanahan*, 411 U.S. at 165 ("the state has interfered with matters which the relevant treaty and statutes leave to the exclusive province of the Federal Government and the Indians themselves.").

Congress remains firm in its recognition of tribal sovereignty and of the powers and rights held by tribal sovereigns. Thus, although tribal sovereignty may have some limitations imposed by Congress, Indian tribes remain "domestic dependent nations"

that exercise inherent sovereign authority over their members and their territory. *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 509 (1991).

In those instances where Congress limits tribal sovereign powers or allows state incursion into tribal matters, it does so only by clear, express, and unequivocal language. *E.g., County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251, 258 (1992) (absent cession of jurisdiction or other federal statute permitting it, states are without power to tax reservation lands and Indians within Indian country absent unmistakably clear congressional intent); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) (waivers of tribal sovereign immunity by Congress must be clearly expressed); *Menominee Tribe v. United States*, 391 U.S. 404, 411-413 (1968) (termination act requires explicit statement abrogating treaty hunting and fishing rights, and such intention would not be lightly imputed to the Congress).

Tribal sovereignty coupled with the exclusive authority of the United States over the affairs of Indians creates a near absolute bar to state tax authority over Indians within Indian country:

> The Constitution vests the Federal Government with exclusive authority over relations with Indian tribes. As a corollary of this authority, and in recognition of the sovereignty retained by Indian tribes even after formation of the United States, Indian tribes and individuals generally are exempt from state taxation within their own territory.

Montana v. Blackfeet Tribe of Indians, 471 U.S. 759, 764 (1985) (citations omitted).[2] The Federal Government's

2. *See also The Kansas Indians*, 72 U.S. (5 Wall) 737 (1867) (state (Cont'd)

protection of Indian tribes and recognition of their sovereignty underpins this reversal of the usual rule applicable to tax exemptions. *E.g., Oklahoma Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114, 124 (1993) ("the tradition of Indian sovereignty requires that the rule be reversed when a State attempts to assert tax jurisdiction over an Indian tribe"); *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973) (concluding state assertion of taxing jurisdiction over tribes and Indians within Indian country is distinguishable from other assertions of state jurisdiction).

Accordingly, this Court adheres to a categorical presumption against state authority to tax Indians within Indian country:

> In keeping with its plenary authority over Indian affairs, Congress can authorize the imposition of state taxes on Indian tribes and individual Indians. It has not done so often, and the Court consistently has held that it will find the Indians' exemption from state taxes *lifted only when Congress has made its intention to do so unmistakably clear.*

(Cont'd)
did not have authority to impose a tax on lands within the Shawnee Indian Reservation); *The New York Indians*, 72 U.S. (5 Wall) 761, 771 (1867) (state's attempt to tax Indian reservation land was "extraordinary," and "illegal" exercise of state power and "unwarrantable interference, inconsistent with the original title of the Indians, and offensive to their tribal relations."); *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164 (1973) (state cannot tax personal income earned by an Indian from employment on a reservation); *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 463 (1976) (state cannot impose personal property taxes upon motor vehicles or motorhomes owned by reservation Indians); *Bryan v. Itasca County*, 426 U.S. 373 (1976); *Crow Tribe of Indians v. Montana*, 819 F.2d 895, 903 (9th Cir. 1987) (state cannot impose severance tax on coal owned by tribe), *summarily aff'd*, 484 U.S. 997 (1988)).

Montana v. Blackfeet Tribe, 471 U.S. 759, 765 (1985) (emphasis added). *See also California v. Cabazon Band of Indians*, 480 U.S. 202, 215 n.17 (1987) (characterizing *Montana* holding as a "per se rule.").

In accordance with the foregoing principles, the *Yakima Nation* analysis begins with a statement of the "unmistakably clear intent" rule:

> [W]e have traditionally followed "a per se rule" "[i]n the special area of state taxation of Indian tribes. . . ." "Either Congress intended to pre-empt the state taxing authority or it did not. Balancing of interests is not the appropriate gauge for determining validity [of state taxation] since it is that very balancing which we have reserved to Congress."

Yakima Nation, 502 U.S. at 267 (quotations and citations omitted). The *Yakima Nation* decision thus hinges on the clearly manifested intention of Congress to permit the state tax, which the Court found in § 6 of the General Allotment Act. *Yakima Nation*, 502 U.S. at 259 n.1.

The *Yakima Nation* holding is much more than the simplistic conclusion that alienability equals taxability. It is the product of the convergence of the "unmistakably clear intent" rule and indicia of Congress' rescission of the special relationship of the Federal Government to Indian allottees under the General Allotment Act: Congress' grant of state personal criminal and civil jurisdiction over allottees upon issuance of a fee patent and Congress' express grant of taxation authority under the Burke proviso amending the General Allotment Act. These indicia led the *Yakima Nation* Court to hold that, under those particular circumstances, land under the General Allotment Act was subject to the state's real property tax. Those specific indicia in the General Allotment Act and Burke Act

proviso do not control the question of taxation of lands removed from Indian ownership under other statutory or treaty provisions.

Modern Supreme Court decisions that prohibit state taxation of Indian property within Indian country do so in the context of property that was fully alienable.[3] *Yakima Nation* is properly viewed as an application of the "unmistakably clear intent" rule and a logical extension of this line of cases and does not rest on alienability.[4] This reading of *Yakima Nation* is confirmed by the

3. *E.g.*, *Bryan v. Itasca County*, 426 U.S. 373 (1976) (prohibiting state taxation of a mobile home and other personal property owned by an Indian and located within Indian country, even though Congress had granted civil jurisdiction to the state over Indians in Indian country through Public Law 280); *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164 (1973) (prohibiting state taxation of income earned by a tribal member residing within Indian country); *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463 (1976) (prohibiting state taxation of motor vehicles owned by Indians residing within Indian country); *Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134 (1980) (prohibiting state taxation of the sale of tobacco products to Indians within Indian country).

4. Indeed, the Supreme Court has prohibited state taxation of non-Indian property and transactions within Indian country, even though the property involved in such transactions was fully alienable. *E.g.*, *Central Machinery Company v. Arizona State Tax Comm'n*, 448 U.S. 160 (1980) (sale of non-Indian personal property to tribe exempt from state transaction privilege tax); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980) (non-Indian enterprise doing business on the reservation exempt from state motor carrier license tax and fuel tax); *Warren Trading Post v. Arizona State Tax Comm'n*, 380 U.S. 685 (1965) (store owned by non-Indian and located on reservation exempt from state gross receipts tax). These decisions rely on principles of federal preemption that evince the intent of Congress to prohibit state economic and legal intrusions into reservation affairs involving Indians. In none of these cases was alienability a factor in the decision. In every case, the location of the property or transaction on an Indian reservation and the incidence of the tax falling on an Indian or Indian tribe controlled the outcome.

subsequent decision in *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995) (rejecting state motor fuel tax upon Indians and Indian tribes within Indian country).

Because of the operation of the Supremacy Clause and the federal trust responsibility, a state may not "tax indirectly what it cannot tax directly." *Sac & Fox Nation v. Oklahoma Tax Comm'n*, 967 F.2d 1425, 1430 (10th Cir. 1992), *vacated on other grounds*, 508 U.S. 114 (1993). It is one thing to infer congressional consent to state taxation of individual Indians who have abandoned their tribal relations, *e.g.*, *Goudy v. Meath*, 203 U.S. 146 (1906) (holding taxable land owned by individual who had abandoned tribal relations); it is quite another to infer that consent to allow taxation of the sovereign tribal government itself.

States may not unilaterally overcome the constitutional bar to their exercise of power over sovereign Indian tribes by recharacterizing a tax as falling on the land, rather than the landowner. A state's characterization of its tax is of little relevance in determining whether the state may overcome the Supremacy and Indian Commerce Clauses and other federal law and assert its taxing authority over a sovereign Indian tribal government operating within its reservation. *E.g.*, *Confederated Tribes of the Colville Indian Reservation*, 447 U.S. at 163 ("While [the state] may well be free to levy a tax on the use outside the reservation of Indian-owned [personal property], it may not under that rubric accomplish what *Moe* held was prohibited."); *see also United States v. Michigan*, 106 F.3d 130 (6th Cir. 1997).

Many state property tax schemes have some direct operation upon the landowner — in this case a sovereign tribal government. In recognition of the reality that it is the landowner who pays the taxes, states have long exempted property from taxation according on the status of the landowner,[5] particularly when the owner is a

5. *E.g.*, Idaho Code § 63-602AA(1) ("The following property is (Cont'd)

governmental entity.[6] Indeed, in many states the exemption of property from taxation based upon the landowner's status is constitutionalized.[7]

As owners of fee land, sovereign tribal governments must ultimately pay the taxes — either by a cash payment from their

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exempt or partially exempt from taxation: real and personal property belonging to persons who, because of unusual circumstances which affect their ability to pay the property tax, should be relieved from paying all or part of said tax in order to avoid undue hardship, which undue hardship must be determined by the board of equalization."); Mich. Comp. Laws § 211.7b (homestead of disabled soldier or a sailor or a surviving spouse exempt from real estate tax); *id.* § 211.7o (property of nonprofit charitable institutions exempt from real estate tax); *id.* § 211.7q (property owned by youth organizations exempt from real estate tax; *id.* § 211.7r; *id.* § 211.7u (property of persons in condition of poverty exempt from real estate tax).

6. *E.g.*, Idaho Code § 63-602A(1) ("The following property is exempt from taxation: property of the United States, except when taxation thereof is authorized by the congress of the United States, this state, or to any county or municipal corporation or school district within this state."); Mich. Comp. Laws § 211.7 (federal property exempt from real property tax); *id.* § 211.7*l* (state public property exempt from real property tax). *See also* footnote 7 *infra*.

7. *E.g.*, Idaho Const. art. VII, § 4 ("the property of the United States . . . the state, counties, towns, cities, villages, school districts, and other municipal corporations and public libraries shall be exempt from taxation"); Montana Const. art. 8, § 5 (allowing tax exemptions for property "of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries. . . ."); Utah Const. art. 13, § 2(2) (establishing tax exemptions for property owned by the state, school district, public libraries, certain nonprofit entities, and disabled persons disabled in the line of duty during any war, international conflict or military training in the military service of the United States or state of Utah).

sovereign coffers or by forfeiture of their land at sale. If the state real property taxes are enforceable against the sovereign tribal governments, only one of two proscribed results will obtain.

The first result is that a state government will be allowed to invade the treasury of a sovereign Indian tribe in the amount of the tax. *See Hoopa Valley Tribe v. Nevins*, 881 F.2d 657 (9th Cir. 1989) (holding unlawful state timber yield tax passed on to non-Indian purchasers of tribal timber), *cert. denied*, 494 U.S. 1055 (1990); *Crow Tribe of Indians v. Montana*, 819 F.2d 895 (9th Cir. 1987), *aff'd*, 484 U.S. 997 (1988) (holding unlawful state coal severance tax because the taxes ultimately reduced the royalty received by the tribe). The second but equally forbidden result is that the tribal property will be sold at a state tax sale. *See* 25 U.S.C. § 177. The first result diminishes the tribal fisc; the second diminishes the tribal land base. Both results are preempted by the Federal Government's exclusive authority over Indian tribes and damage tribal sovereignty, self-determination and self-sufficiency.

More directly, however, both results frustrate the long-established policies of both the Federal Government and Indian tribal governments to restore to tribal ownership some measure of the reservation land base removed from tribal ownership. Correct application of the "unmistakably clear intent" rule in cases where state governments attempt to tax the property of a tribal government affect more than recognition of the correct rules governing federal-tribal relations. Other positive laws, which codify the Federal Government's policy of conserving and expanding the land base of Indian tribes, require continued correct application of the "unmistakably clear intent" rule.

II. FOR OVER TWO HUNDRED YEARS, CONGRESS HAS PROTECTED TRIBES' LAND BASES AND PROMOTED THEIR ACQUISITION OF LANDS.

One express codification of the Congress' intention to protect the existing tribal land base from further erosion is the Indian Non-Intercourse Act, Act of June 30, 1834, ch. 161, § 12, 4 Stat. 730 (codified in present form at 25 U.S.C. § 177).[8] By its express terms, the Non-Intercourse Act continues to place a restraint on alienation of all tribal lands — whether held in fee or trust status.[9]

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8. Section 177 states in relevant part:

> No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.

25 U.S.C. § 177. In its brief on the merits, respondent Leech Lake Band details the 200-year history of the Non-Intercourse Act.

9. *E.g.*, *United States v. Sandoval*, 231 U.S. 28, 47-48 (1913) (holding that fee status of the Pueblos' land was not an impediment to Congress' constitutional power to apply liquor prohibition to such lands); *Alonzo v. United States*, 249 F.2d 189, 195-96 (10th Cir. 1987) (concluding that the word "lands" in the text of § 177 "is in nowise limited by any express or implied language in the Act," and that the "reason for the imposition of the restrictions is in nowise related to the manner in which the Indians acquire their lands."); *Mohican Tribe v. Connecticut*, 638 F.2d 612, 621 (2nd Cir. 1980) ("the Non-Intercourse Act, containing no language of limitation, must then be read as applying to all Indian lands"); *United States v. 7,405.3 Acres of Land*, 97 F.2d 417 (4th Cir. 1938) (lands purchased by tribe fall within the protection of the federal government and the restrictions upon alienation); *Cuyuga Indian Nation of New York v. Coumo*, 565 F. Supp. 1297, 1313 (N.D.N.Y. 1983) ("the language of the 1793 and 1802 Non-Intercourse Acts (Cont'd)

The Non-Intercourse Act confirms that the insulation of tribal lands from state control remains one of the cornerstones of federal Indian policy. *E.g.*, *County of Oneida*, 470 U.S. 226 (1985).

The overriding present-day policy behind § 177 is to protect the tribal land base. *United States ex rel. Santa Ana Pueblo v. University of New Mexico*, 731 F.2d 703 (10th Cir.), *cert. denied*, 469 U.S. 853 (1984); *see also Felix S. Cohen's Handbook of Federal Indian Law*, 508-509 (R. Strickland ed. 1982) ("*1982 Handbook*"). By requiring federal approval of any sale of tribal lands, § 177 codifies Congress' continued protective policy towards those lands. As one court explains:

> The federal government, acting through Congress

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reveals no ambiguity whatsoever as to their geographic scope"), *aff'd*, 528 F.2d 370 (1st Cir. 1975); *Joint Tribal Council of the Passamaquody Tribe v. Morton*, 388 F. Supp. 649, 660 (D. Maine 1975) ("the Court holds that the Non-Intercourse Act is to be construed as its plain meaning dictates and applies to the Passamaquody Indian Tribe"); 25 C.F.R. § 152.22(b) (1995). *See also* Felix S. Cohen, *Handbook of Federal Indian Law*, 321 (1942 ed.) ("[A] tribe holding land in fee simple is subject to exactly the same restraints upon alienation as any other tribe"; citing *United States v. Candaleria*, 271 U.S. 432 (1926)); *1982 Handbook*, at 480 n.73 ("The precise title granted to the tribe makes little difference since, absent contrary congressional action, the restrictions on alienation and other unique attributes of Indian trust land apply equally to lands held in trust for the tribes by the United States and to lands held in fee title by tribes with which the federal government maintains a trust relationship"). *See generally County of Oneida v. Oneida Indian Nation*, 470 U.S. 226 (1985); *Jicarilla Apache Tribe v. Board of Commr's*, 883 P.2d 136, 140 (N.M. 1994) (stating "[w]e also that the [land held in fee by the tribe] became subject to a restriction against alienation imposed by the United States when it was purchased by the Tribe."), *adopting in relevant part but rev'g on other grounds Jicarilla Apache Tribe v. Board of Commr's*, 862 P.2d 428 (N.M. Ct. App. 1993).

> and the Department of the Interior, has often established nation-wide policies for the retention or disbursement of Indian lands. . . . The Non-Intercourse Act's government approval requirements serves [sic] both to preserve the trust relationship between the government and the Tribe and to insure that management of Indian lands be in keeping with nation-wide policies established by the federal government.

Bear v. United States, 611 F. Supp. 589, 597 (D. Neb. 1985) (citations omitted), *aff'd*, 810 F.2d 153 (8th Cir. 1987).

Congress occasionally invokes its ability to override by statute § 177's umbrella restriction on alienability of tribal lands, thereby recognizing § 177's continuing viability. *E.g.*, Indian Land Consolidation Act of 1983, 25 U.S.C. §§ 2201 *et. seq.* (allowing tribes to exchange lands under a consolidation plan); 25 U.S.C. § 407 (allowing tribes to sell standing timber from their lands); *id.* § 415 (allowing tribes to lease their lands); *id.* § 477 (allowing tribes chartered as corporations to buy and sell land); *see also 1982 Handbook* at 517 n.56.[10]

Congress rarely lifts § 177's restriction allowing Indian land to be alienated involuntarily. Indeed, only in the case of

10. These statutes indicate three things. Primarily, as noted above, Congress continues to recognize the effect of § 177 in the modern era and passes statutes to expressly overcome the restriction only for specific purposes. Second, these statutes refute any notion that § 177 prohibits every encumbrance or alienation of tribal lands and thus is unduly restrictive. Third, these statutes exemplify Congress' broad authority over Indian property and its ability to modify or enhance the existing statutory framework in the interest of carrying out the Federal Government's policy of protecting tribal interests and property from incursion by states and third parties.

condemnation has Congress allowed involuntary alienation of tribal lands. *E.g., Federal Power Comm'n v. Tuscarora Indian Nation*, 362 U.S. 99 (1960) (off-reservation fee lands); *Bear v. United States*, 611 F. Supp. 589 (D. Neb. 1985) (treaty lands). The Constitution mandates that in federal condemnation actions fair market value be paid for the land and that the land be used for a public purpose. An involuntary sale under a state property tax scheme accomplishes the very thing § 177 is designed prevent: the involuntary loss of tribal lands into private ownership. *See 1982 Handbook* at 520.

A second statutory expression of the Federal Government's policy of conserving and enhancing the tribal land base is contained in the Indian Reorganization Act, 25 U.S.C. §§ 476-494 (IRA). The IRA was intended to stop the alienation of tribal land needed to support Indians and to provide for acquisition of additional land for tribes. *1982 Handbook* at 147; *see also* Senate Report No. 1080, 73d Cong. 2d Sess. at 1 (May 10, 1934); Cong. Rec. 11724, 11730 (Jun. 15, 1934) (floor remarks of Sen. Howard) ("In order to protect the economic future of the Indians and to protect the Government itself against the loss and disintegration of the Indian property, it is most essential to prevent alienation of Indian lands outside of Indian ownership.").

The IRA specifically halts the allotment process. 25 U.S.C. § 461. In addition, Congress authorizes the Secretary of the Interior to "restore to tribal ownership the remaining surplus lands of any reservation heretofore opened. . . ." 25 U.S.C. § 463.

Section 5 of the IRA, 25 U.S.C. § 465, the purpose of which is also to "provid[e] land for Indians," allows exchange transactions in which an individual Indian transfers allotted land to the tribe in exchange for an assignment of occupancy rights in the same or another tract. Congress intended section 5 "to increase the tribal estate rather than to open the way to its alienation." *1982 Handbook*

at 483 (citation omitted). The IRA provides other methods for conserving and expanding tribes' land base to enhance tribes' exercise self-government and to become assist them in becoming self-sufficient. *See generally 1982 Handbook* at 148-49.

Other federal statutes enacted after the IRA continue the federal policy of restoration of tribal land. Such statutes may authorize the use of tribal funds to purchase individually owned lands within Indian reservations. *1982 Handbook* at 479 nn.64-65. From time to time Congress acts to purchase, exchange or otherwise increase the land base of particular tribes. *E.g.*, 25 U.S.C. § 463b (authorizing purchase of lands for Papago Indians), § 463d (authorizing purchase of lands for Umatilla Reservation).

Congress has also authorized the Secretary of Agriculture to make loans to Indian tribes or tribal corporations established under § 17 of the IRA that do not have adequate funds to purchase lands for use of the tribe, or the corporation, or members of either. 25 U.S.C. § 485.

Congress has also increased the tribal land base by declaring to be held in trust for various Indian tribes "all right, title and interest of the United States of America in all of the land" acquired under the National Industrial Recovery Act, 48 Stat. 200, the Emergency Relief Appropriation Act, 49 Stat. 115, and § 55 of the Act of August 24, 1935, 49 Stat. 750, 781; 25 U.S.C. § 459; *see also* 25 U.S.C. § 459b (similar interests to be held for the Stockbridge Munsee Indian Community). Congress confirmed the exemption of these interests in land from federal, state and local taxation. 25 U.S.C. § 459e.

These statutes are examples of the direct expressions of the Federal Government's continuing dedication to restoring to Indian tribes a land base sufficient for them to become self-sufficient and self-governing. Allowing tribally owned lands to be involuntarily

burdened or alienated through operation of state property tax schemes is contrary to Congress' express statutory objectives to conserve and reestablish the land base of sovereign Indian tribes.

CONCLUSION

For the foregoing reasons, amicus Saginaw Chippewa Indian Tribe of Michigan respectfully requests that this Court affirm the decision in *Leech Lake Band of Chippewa Indians v. Cass County*, 108 F.3d 820 (8th Cir. 1997).

Respectfully submitted,

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